

Matter of: Tri-Star Industries, Inc.

File: B-254767; B-254767.2

Date: January 18, 1994

David M. Sheehan, Esq., Kollman & Sheehan, P.A., for the protester.

John Love, Esq., for Van Ommeren Shipping (USA) Inc., an interested party.

John M. Binetti, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of technical acceptability of proposal is denied where contracting officer reasonably concluded that the awardee met the solicitation requirements and sufficiently demonstrated its ability to perform the required services.

DECISION

Tri-Star Industries, Inc. protests the award of a contract to Van Ommeren Shipping (USA) Inc. under request for proposals (RFP) No. N62387-93-R-8512, issued by the Military Sealift Command (MSC), Department of the Navy, for a vessel to transport containerized cargo between the continental United States and Praia Da Vitoria, Azores. Tri-Star, the incumbent carrier, argues that Van Ommeren's proposals to use the vessels Big Orange X or Strong Texan should have been rejected for failing to meet certain solicitation requirements.

¹Tri-Star also argued that the Big Orange X, a Panama flagship, was not a documented United States flagship as required by the solicitation. However, the record shows that on December 10, 1993, the Big Orange X was reflagged as a United States ship and renamed the Strong Cajun. Van Ommeren proposed to use a different vessel, the Rainbow Hope, on an interim basis while the Big Orange X underwent modification and reflagging. The Rainbow Hope is a United States flag vessel previously used by Tri-Star for military

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We deny the protests.

The solicitation was issued on June 15, 1993, and provided for award to be made to the lowest-priced, technically acceptable, responsible offeror. Technical acceptability was to be determined based on the following factors, which are all of equal importance: (1) capacity, (2) frequency of service, (3) ability to maintain a self-sustaining service, (4) ability to maintain an adequate sailing schedule to meet frequency of service requirements, (5) carrier's ability to provide adequate container service, and (6) performance history.

Tri-Star and Van Ommeren submitted proposals by the July 15 closing date. Van Ommeren submitted alternate proposals with different vessel configurations and pricing. The agency determined the three offers to be technically acceptable or susceptible to being made technically acceptable and conducted discussions with both offerors. Best and final offers (BAFO) were submitted on August 16. The agency determined that all BAFOs were technically acceptable and found both offerors responsible. The results of the final evaluation were as follows:

<u>OFFEROR</u>	<u>VESSEL</u>	<u>BAFO PRICE</u>
Van Ommeren	Big Orange X	\$11,881,220
Van Ommeren	Strong Texan	\$13,722,083
Tri-Star	Rainbow Hope	\$14,839,625

The agency awarded to Van Ommeren as the low-priced offeror on August 24. Tri-Star filed its initial protest with our Office on September 3.

Tri-Star initially objected to the award to Van Ommeren on the basis that Van Ommeren's proposal to use the vessel Big Orange X failed to meet certain solicitation requirements. Tri-Star also objected to the contracting officer's determination that Van Ommeren was a responsible offeror.

Upon receipt of the agency's report submitted in response to the protest, Tri-Star discovered that Van Ommeren had submitted an alternate proposal to use the vessel Strong Texan which was determined to be technically acceptable and was also lower priced than Tri-Star's proposal. Tri-Star

¹(...continued)

shipping and is the vessel offered by Tri-Star in its proposal. Van Ommeren chartered the Rainbow Hope from Tri-Star to perform the contract until the Strong Cajun is ready. Since the awardee proposed a United States flagship at all times, this protest ground is without merit.

subsequently filed a timely protest objecting to an award to Van Ommeren based on its alternate proposal. The protester maintains, with respect to both proposals, that the awardee failed to adequately respond to the solicitation requirements for (1) documentation establishing control or the right to obtain control of the necessary vessels in sufficient time to commence service on October 1, (2) a detailed description of containers to be used, (3) a summary of past and/or current performance records for the last 5 years, and (4) a detailed statement of financial condition.

Because the protester submitted the third low proposal, it can properly protest the agency's acceptance of the low proposal only if it also presents a valid objection to the acceptability of the second low proposal. We therefore will first consider the protest with respect to the second low proposal.

The evaluation of technical proposals is the function of the contracting agency, our review of allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. We conclude that the agency's evaluation of Van Ommeren's Strong Texan proposal was reasonable and that the proposal was properly determined to be technically acceptable.

The RFP called for documentation establishing the offeror's ability to provide a vessel to commence service on October 1, 1993. Van Ommeren in its initial proposal specifically stated that it was currently performing an MSC contract using Strong Texan and since that contract would expire on September 30, the vessel would be available to commence services on October 1. Further, during discussions, Van Ommeren provided MSC its parent company's annual report which listed the Strong Texan as part of the parent company fleet. Thus, Van Ommeren provided information concerning the availability of the proposed vessel. Under these circumstances, we believe the contracting officer reasonably determined that Van Ommeren had the requisite control of the Strong Texan.

To permit evaluation of the carrier's ability to provide adequate container service, the solicitation called for a detailed description of the containers to be used in performance of the contract, such as serial numbers for each container (numbers could be shown by "series" of containers

if all containers within that series had identical inside cubic capacity and maximum weight carrying capacity), and type and size of containers in the carrier's fleet. Van Ommeren stated that it currently had 200 containers leased from Transamerica Leasing and Genstar and that if awarded the contract it would be able to lease up to 800 additional containers. In addition, Van Ommeren provided descriptive literature that described in detail each type of container it proposed to use during contract performance, including material components, length, height, and capacity. The information submitted by Van Ommeren established that it had the necessary containers available for service and provided the necessary dimension/capacity information relevant to a technical acceptability determination. While the awardee did not furnish the information in the precise form requested, we think the awardee's response reasonably was determined acceptable.

Although the RFP required submission of a performance history summary, neither Tri-Star nor Van Ommeren provided detailed performance history information. Since the contracting officer was familiar with both offerors' performance history, she waived the requirement to provide detailed information on all commercial and government contracts for both offerors. Thus, while Van Ommeren did not comply with this requirement, neither did the protester, and under these circumstances, we do not see how Tri-Star was prejudiced by Van Ommeren's omissions in this area.

Tri-Star points out that in response to the solicitation requirement to furnish a detailed statement of financial condition, Van Ommeren submitted only a 1992 annual report of its parent company. The solicitation stated that this information was provided to enable the contracting officer to make a responsibility determination. Since this information was to be used only for responsibility purposes, it was for the contracting officer to determine the extent to which she could utilize it to determine the offeror's responsibility. MSC determined Van Ommeren to be responsible based on a review of its annual report and Van Ommeren's exceptional performance under several MSC contracts in recent years. Where, as here, the contracting officer has made an affirmative determination of the awardee's responsibility, we will not review that determination without a showing that the contracting officer acted fraudulently or in bad faith or failed to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5) (1993); Murdaugh Constr. Co., Inc., B-245133, Aug. 14, 1991, 91-2 CPD ¶ 150. There is no such showing here.

Since Van Ommeren's proposal for the use of the Strong Texan was properly determined to be technically acceptable, we need not address Tri-Star's initial protest against Van

Ommeren's Big Orange X proposal because even if we sustain that protest, Van Ommeren's Strong Texan proposal, and not the protester's, would be next in line for award.

The protests are denied.

Robert P. Murphy
Acting General Counsel